

## REMARKS

Applicants have not amended any claims in this Response.

Applicants choose not to respond to the provisional double patenting rejection of claims 1, 7 and 8 at this time.

Claims 1, 2, 4-8, 10, 13, 14 and 16 have been rejected under 35 USC 112, first paragraph, for lack of written description. Applicants respectfully traverse this rejection.

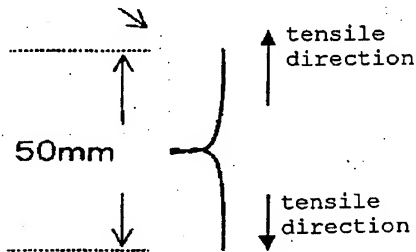
Claim 1 recites a heat sealable polypropylene resin laminate film including a heat sealable layer having a melting point of not more than 150°C as a surface layer, a substrate layer made of a crystalline polypropylene resin, and an intermediate layer disposed between the heat sealable layer and the substrate layer and comprising an  $\alpha$ -olefin copolymer containing a cold xylene-soluble fraction in a proportion of not more than 3% by mass. Claim 1 also states that the substrate layer is not a heat sealable layer. The Examiner contends that the specification does not support the limitation that the substrate layer is not a heat sealable layer.

In the Amendment filed April 1, 2011, applicants explained that applicants clearly distinguished the claimed substrate layer from the claimed *heat sealable* layer in the specification. The disclosure of this application reasonably conveys to persons skilled in the art that applicants had possession of the claimed subject matter that includes a heat sealable layer and a substrate layer that is not a heat sealable layer, as of the filing date of this application. Under *Ariad Pharmaceutical, Inc. v. Eli Lilly and Co.*, 598 F.3d 1336 (Fed. Cir. 2010) (*en banc*), the application supports the limitation that the substrate layer is not a heat sealable layer.

In paragraph 7 of the pending Action, the Examiner points to portions of the specification where applicants explained that the substrate layer is formed by melt-extrusion. Based on the fact that the substrate layer is melted at high temperature, the Examiner contends that the substrate layers described in the specification are “inherently capable of being ‘heat sealable’ given a high enough sealing temperature.” Applicants respectfully disagree.

Persons skilled in the art would know that melt-extrusion is different from heat sealing of resin films. To melt-extrude a resin, that resin must be melted. On the other hand, to heat seal a resin film, that film cannot be melted, because otherwise the film would lose its shape. The Examiner is correct in suggesting that any resin can be melted at a high enough temperature. However, a temperature proper for extrusion is not a temperature proper for heat sealing. For example, claim 1 specifies that a heat sealable layer has a melting point of not more than 150°C, while the extrusion temperature used in the Production Examples in the application is 260°C. The fact that the substrate layer can be melted for extrusion does not support the Examiner's contention that persons skilled in the art would consider the substrate layer to be a heat sealable layer.

In the previous Amendment, applicants also explained that the samples for the heat sealing test were made as "central principal rafter seal shape." FIG. 1 of the application shows such a sample made as "central principal rafter seal shape," as follows:



As shown in this drawing, the laminate film is folded so that a portion of the heat sealable layer is in contact with another portion of the heat sealable layer. In this folded configuration, heat is applied, for sealing, to the portions of the heat sealable layer in contact with each other through the substrate layer that forms the outermost layer of the folded laminate film. Persons

skilled in this art know that if the substrate layer, which is the outermost layer of the folded laminate film, were a heat sealable layer, such a substrate layer would stick to a heat plate used for heat sealing when the laminate film is heat sealed. This would result in a failed sealing of the laminate film. Accordingly, the claimed substrate layer cannot be and is not a heat sealable layer.

In paragraph 33 of the Action, the Examiner contends, "While applicant may not have used the substrate layer to form heat seals, this does not negate the fact that the substrate layer disclosed by applicant is capable of heat sealing." However, the application describes the substrate layer as being different from the heat sealable layer, as explained above. The substrate layer may be melted at 260°C, but this does not mean that it has a melting point of not more than 150°C specified by claim 1. Further, the heat sealing method shown in FIG. 1 above clearly distinguish a resin layer that is heat-sealable (the heat sealable layer) from a resin layer that is not heat-sealable (the substrate layer). Thus, persons skilled in the art would understand that applicants had possession of the claimed laminate film that includes a substrate layer that is not a heat sealable layer at the time of filing this application.

In the same paragraph, the Examiner also contends, "Clearly, the substrate layer may be capable of forming a heat seal and would not result 'in a failed sealing of the laminate film' as asserted if the heat sealing temperature for the heat seal layer and substrate layer were different from one another." However, the Examiner ignores the limitation in claim 1 that the heat sealable layer has a melting point of not more than 150°C. Nothing in the specification discloses or suggests that the substrate layer has "a melting point of not more than 150°C," as specified by claim 1. The fact that the substrate layer is melt-extruded at 260°C does not support the Examiner's conclusion that the substrate layer described in the application is a heat sealable layer.

The written description rejection of claims 1, 2, 4-8, 10, 13, 14 and 16 should be withdrawn because the application supports the limitation that the substrate layer is not a heat sealable layer, as explained above.

Claims 1, 2, 4, 5, 7, 8, 10, 14 and 16 have been rejected under 35 USC 103(a) on U.S. Patent No. 4,726,999 (Kohyama) and "Crosslinking of Polypropylene," by Ivan Chodák, in Polypropylene – An A-Z Reference, pp 128-134, Kluwer Publishers (Chodák). Applicants respectfully traverse this rejection.

The Examiner states that Kohyama discloses a laminate of a substrate layer and a heat sealable layer but admits that "Kohyama is silent regarding disposing an additional substrate layer which is incapable of being heat sealed on the substrate layer disclosed." See paragraph 18 of the Action. However, the Examiner contends at paragraph 20 of the Action as follows:

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided an additional substrate layer on the opposite side of the substrate layer from the heat sealable layer of Kohyama on top of the substrate layer disclosed by Kohyama made of a crystalline polypropylene material as disclosed for the substrate layer in order to improve the strength of the laminate film.

In other words, the Examiner alleges that persons of ordinary skill in the art would have added "an additional substrate" to Kohyama's substrate layer/heat sealable layer laminate because that modification would "improve the strength of the laminate film." Applicants respectfully disagree.

In paragraph 17 of the Action, the Examiner explains that Kohyama's laminate film has "superiority in mechanical properties such as tensile strength, rigidity, surface hardness and impact strength." Applicants agree. In other words, Kohyama's substrate layer alone provides sufficient strength. Kohyama does not disclose or suggest that its strength must be further improved. Accordingly, persons of ordinary skill in the art would have had no reason to add "an additional substrate layer" to Kohyama's laminate film because Kohyama's laminate film already has "superiority in mechanical properties."

Applicants note that the Examiner relies on Chodák for the disclosure of “an additional substrate layer which is incapable of being heat sealed on the substrate layer” and not for a reason to add an additional substrate layer to Kohyama’s laminate film. Accordingly, Chodák does not cure the deficiencies of Kohyama.

The rejection of claims 1, 2, 4, 5, 7, 8, 10, 14 and 16 under 35 USC 103(a) on Kohyama and Chodák should be withdrawn because they do not teach or suggest the claimed laminate film including the heat sealable layer, a substrate layer and an intermediate layer.

The remaining obviousness rejection relies on Kohyama and Chodák thus should be withdrawn as well because they do not provide the teachings for which they are cited.


In light of the above, a Notice of Allowance is solicited.

In the event that the transmittal letter is separated from this document and the Patent and Trademark Office determines that an extension and/or other relief is required, applicants petition for any required relief including extensions of time and authorize the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 03-1952** referencing docket no. **358362011500**.

Respectfully submitted,

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